



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FCP/149070

PRELIMINARY RECITALS

Pursuant to a petition filed April 29, 2013, under Wis. Admin. Code § DHS 10.55, to review a decision by the Community Care Inc. in regard to Medical Assistance, a hearing was held on May 16, 2013, at Racine, Wisconsin.

The issue for determination is whether Community Care, Inc. (Community Care) correctly denied Petitioner's request for an increase in Supportive Home Care hours.

NOTE: At the hearing Petitioner did not ask for the record to be held open. However on May 28, 2013, Petitioner submitted a fax asking for consideration to be given to a letter from Dr. Clay Frank dated May 21, 2013. The fax has been marked as Exhibit 8 and entered into the record.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street
Madison, Wisconsin 53703

By: Lynn O'Neil, Case Manager; Karen Evans, RN; Patti Miller, Supervisor
Community Care Inc.
205 Bishops Way
Brookfield, WI 53005

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Racine County and is a Family Care participant.

2. On February 4, 2013, Community Care completed an In-Home Assessment Tool (I-HAT), allocating 74 hours per month of Supportive Home Care (SHC) services. This did not change the SHC hours Petitioner received after an I-HAT was completed in December 2012. (Exhibit 5, pgs. 3-4; Exhibit 7, pgs. 7-10)
3. On February 28, 2013, Petitioner submitted a request for an increase in her Supportive Home Care hours. (Exhibit 5, pg. 26)
4. On March 27, 2013, Petitioner's interdisciplinary team completed a Resource Allocation Decision Tool. (Id.)
5. On March 28, 2013, Community Care sent Petitioner a notice of action indicating that it denied her request for increased supportive home care services. (Exhibit 5, pg. 30)
6. Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on April 29, 2013. (Exhibit 1)

DISCUSSION

The Family Care Program is a subprogram of Wisconsin's Medical Assistance (MA) program and is intended to allow families to arrange for long-term community-based health care and support services for older or impaired family members without resort to institutionalization, *Wis. Stats.* §46.286; *Wis. Admin. Code* §DHS 10.11. The Family Care Long Term Care program (FCP) is a long-term care benefit for the elderly, people with physical disabilities and those with developmental disabilities. *Medicaid Eligibility Handbook (MEH)*, §29.1.

An individual, who meets the functional and financial requirements for Family Care, participates in Family Care by enrolling with a Care Management Organization (CMO), which, in turn, works with the participant and his/her family to develop an individualized plan of care. *See Wis. Stats.* §46.286(1) and *Wis. Admin. Code* §DHS 10.41. The CMO, in this case Community Care, implements the plan by contracting with one or more service providers.

Wis. Admin. Code DHS 10.41(2) states that:

Services provided under the family care benefit shall be determined through individual assessment of enrollee needs and values and detailed in an individual service plan unique to each enrollee. As appropriate to its target population and as specified in the department's contract, each CMO shall have available at least the services and support items covered under the home and community-based waivers under 42 USC 1396n (c) and ss. 46.275, 46.277 and 46.278, Stats., the long-term support community options program under s. 46.27, Stats., and specified services and support items under the state's plan for medical assistance. In addition, a CMO may provide other services that substitute for or augment the specified services if these services are cost-effective and meet the needs of enrollees as identified through the individual assessment and service plan.

Emphasis added

Wis. Admin Code DHS 10.44(2)(f) states that the CMO, in partnership with the enrollee, shall develop an individual service plan for each enrollee that meets all of the following conditions:

1. Reasonably and effectively addresses all of the long-term care needs and utilizes all enrollee strengths and informal supports identified in the comprehensive assessment under par. (e) 1.
2. Reasonably and effectively addresses all of the enrollee's long-term care outcomes identified in the comprehensive assessment under par. (e)(2) and assists the enrollee to be as self-reliant and autonomous as possible and desired by the enrollee.

3. Is cost-effective compared to alternative services or supports that could meet the same needs and achieve similar outcomes. ...

Petitioner wishes to have more Supportive Home Care (SHC) service hours. Petitioner was approved for 74 hours of SHC Services, as of February 4, 2013. She was previously approved for 74 hours in December 2012. So, the February 2013 I-HAT did not change Petitioner's level of service, although it should be noted the December 2012 evaluation was a one hour drop from 75 hours approved in October 2012. However, the 74 hours of SHC services is an overall increase from the 69 hours of SHC services which had been approved between March 2012 through October 2012. (See Exhibit 7)

It is a well-established principle that a moving party generally has the burden of proof, especially in administrative proceedings. State v. Hanson, 295 N.W.2d 209, 98 Wis. 2d 80 (Wis. App. 1980). In a case involving a request for additional services, the applicant has the initial burden to establish he or she met requirements to receive additional services. The burden then shifts to the agency to explain why it concluded the applicant was not eligible for the requested services. Thus, Petitioner bears the burden to prove that she needs additional SHC Services.

Petitioner testified that pain in her legs caused by a neuropathy is getting worse and that she can't walk anymore. Petitioner testified that she has pain in her pelvis which causes her to bend over and also makes walking difficult. Consequently, Petitioner asserts that she needs more assistance with her activities of daily living. In order to support her claim that her condition has worsened since December 2012, Petitioner relies upon a letter from Dr. Clay, Exhibit 8. Although the letter indicates that Petitioner has a condition that caused her a progressive loss of function, the letter does not indicate that any significant changes have occurred, since the December 2012 or February 2013 I-HATs were completed, that would warrant an increase in Petitioner's SHC hours.

Lynne O'Neil, Petitioner's case manager, testified that she met Petitioner at her home on March 1, 2013 and observed Petitioner walking over items on the floor and that she observed Petitioner walk to her walker that was located six feet away. Ms. O'Neil testified that Petitioner was able to walk to her bedroom and demonstrate her ability to sit in and up in bed. Ms. O'Neil testified that Petitioner demonstrated how she gets in and out of the tub and on and off her shower chair and that Petitioner was able to lift her shirt to show staff her scarring. Ms. O'Neil testified that Petitioner was able to bend down to remove her socks.

Karen Evans, Petitioner's assigned nurse for the last two and half years testified that she has not noted any significant changes in Petitioner's condition and that when she went unannounced to Petitioner's residence on February 4, 2013, to complete the I-HAT, Petitioner answered the door without her walker.

Based upon the testimony of Lynne O'Neil and Karen Evans, it is found that Petitioner's health has not changed, such that an increase in her supportive home care hours is warranted at this time.

CONCLUSIONS OF LAW

Community Care correctly denied Petitioner's request for an increase in her Supportive Home Care Hours.

THEREFORE, it is

ORDERED

That the Petition is dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 30th day of May, 2013.

\sMayumi M. Ishii
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

David H. Schwarz
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on May 30, 2013.

Community Care Inc.
Office of Family Care Expansion